

MEMORANDUM

May 6, 2015

TO: Government Operations and Fiscal Policy Committee

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Worksession:** Bill 15-15, Taxes – Excise Tax – Electronic Cigarettes

Bill 15-15, Taxes – Excise Tax – Electronic Cigarettes, sponsored by Lead Sponsor Councilmember Hucker and Co-Sponsors Council President Leventhal, Councilmembers Berliner, Riemer, Council Vice President Floreen, and Councilmembers Katz, Elrich and Navarro, was introduced on April 14, 2015. A public hearing was held on May 5.

**Summary of Bill 15-15.** The major provisions in Bill 15-15 include:

- 1) *Tax levied.* Bill 15-15 would require a distributor of electronic cigarette products to pay an excise tax of 30% of wholesale price of an electronic cigarette product (see ©3, lines 26-28). Bill 15-15 would allow the Council to increase or decrease the rate by resolution (see ©3, lines 30-32). The tax would be payable monthly, unless the Director establishes an alternate payment system (see ©3, lines 36-41).
- 2) *Interest and penalties.* If a person does not pay the tax due, the person would be liable for:
  - 1% interest on the unpaid tax per month for each month or part of a month after the tax is due; and
  - 5% of the amount of tax per month or part of a month after the tax is due, not to exceed 25% of the tax (see ©4, lines 53-58).
- 3) *Unpaid taxes.* If a person does not pay the tax when due, Bill 15-15 requires the Director of Finance to obtain available information to calculate the tax due and assess the tax and penalties against the person by mailing a notice of the tax due (along with interest and penalties) to the person's last known address. The tax would be due within 10 days after the notice (see ©4, lines 71-79).<sup>1</sup>
- 4) *Other provisions.* Other provisions in Bill 15-15, which are similar to other County excise taxes, would:
  - allow the Executive to issue Method (2) regulations to administer the tax (see ©3, lines 33-34);

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<sup>1</sup> Bill 15-15 contains 2 similar provisions for unpaid taxes. After consulting with Executive staff, Council staff recommends removing 52-99(b) as a technical amendment.

- require persons liable for the tax to preserve suitable records necessary to determine the tax for 3 years and allow the Director of Finance to inspect and audit the records (see ©5, lines 80-82); and
- make a failure to pay the tax when due a Class A violation (see ©5, lines 83-86).

**Fiscal and Economic Impact.** As Councilmember Hucker, lead sponsor of Bill 15-15, has repeatedly stated, the purpose of Bill 15-15 is to ensure that the tax code keeps up with a rapidly evolving industry. Funds raised from this tax could be used to support any number of important County programs. The Office of Management and Budget and Department of Finance estimate that when fully implemented, this tax could raise between \$1.54 to \$2.56 million annually (©7-13).

**Legal issue.** Council staff has not received any legal memorandum challenging the validity of the proposed tax under federal or state law. However, at the public hearing, Bruce Bereano, on behalf of the Maryland Association of Tobacco & Candy Distributors, argued that the County does not have the authority to enact this tax because the state law that granted the County its taxing authority specifically stated that the County did not have the authority to tax tobacco-related products. Council staff concedes that the County may not have the authority to tax any product that is subject to the state Tobacco Tax. However, as Councilmembers already know, electronic cigarettes are not subject to the state Tobacco Tax or Other Tobacco Products Tax. The proposed tax would be an exercise of the County's excise tax authority under state law codified as County Code §52-17. The County Attorney concurs that imposing an excise tax on electronic cigarettes is within the authority of the Council.

**Summary of Testimony and Correspondence.** At the public hearing on May 5, and in written correspondence, the Council heard from residents both in support of (©15-30) and opposed (©31-59) to Bill 15-15. In a May 5 memorandum, the County Executive expressed support for the Bill<sup>2</sup> (©14).

**Action in Other Jurisdictions.** To Council staff's knowledge, 2 states and 1 local jurisdiction tax electronic cigarettes. The City and Borough of Juneau, Alaska enacted legislation, effective April 1, to amend the definition of "Other Tobacco Product" to include electronic cigarettes. By doing so, the City and Borough extended the existing other tobacco products tax (45% of wholesale price) to electronic cigarettes. Minnesota also extends their other tobacco product tax to certain electronic cigarettes; the other tobacco product tax is 95% of wholesale price. Finally, North Carolina recently enacted a tax on any nicotine liquid solution that is used in a vapor product at a rate of \$0.05 per fluid milliliter. There are also several jurisdictions throughout the country proposing to tax electronic cigarettes.

**Hucker amendment.** On advice of the American Cancer Society Cancer Action Network, Councilmember Hucker recommends the following amendment to the definition of electronic cigarette product (©2, lines 13-20):

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<sup>2</sup> The County Executive's memorandum suggested an amendment to Bill 15-15 to ensure that the Department of Finance may estimate taxes based on any available information. This language is already included in Bill 15-15.

Electronic cigarette product means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor. Electronic cigarette product includes any [[refill, cartridge, or any other component of an electronic cigarette]] component, part, or accessory of an electronic cigarette, whether or not sold separately, that is used during the operation of the electronic cigarette, but does not include any battery or battery charger that is sold separately.

This packet contains:	<u>Circle #</u>
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Bill No. 15-15  
Concerning: Taxes -- Excise Tax --  
Electronic Cigarettes  
Revised: 4/10/2015 Draft No. 3  
Introduced: April 14, 2015  
Expires: October 14, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Hucker  
Co-Sponsors: Councilmembers Leventhal, Berliner, Riemer, Floreen, Katz, Elrich, and Navarro

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**AN ACT** to:

- (1) establish an excise tax on the distribution of electronic cigarette products;
- (2) set the rate of the tax and authorize the County Council to change the rate each year by resolution;
- (3) define certain terms, and authorize the County Executive to issue certain regulations;
- (4) provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax; and
- (5) generally amend the County laws governing excise taxation.

By adding

Montgomery County Code  
Chapter 52, Taxation  
Article XIII. Excise Tax on Electronic Cigarettes  
Sections 52-95 through 52-100

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

Sec. 1. Chapter 52 is amended by adding Article XIII (Sections 52-96 through 52-100) as follows:

**Article XIII. [Reserved] Excise Tax on Electronic Cigarettes.**

**52-95. Definitions.**

In this Article, the following terms have the meanings indicated:

Dealer means any person who engages in a retail business.

Director means the Director of Finance or the Director's designee.

Distributor means:

(1) a person who supplies an electronic cigarette product to a dealer in the County; or

(2) a person who supplies and services a vending machine with an electronic cigarette product.

Electronic cigarette product means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor. Electronic cigarette product includes any refill, cartridge, or any other component of an electronic cigarette.

Supplying or supplies means the act of providing, furnishing, delivering, distributing, or transmitting an electronic cigarette product by a distributor to a dealer in the County. Liability for the tax accrues when the electronic cigarette product is provided, distributed, or delivered to the dealer in the County.

**52-96. Tax levied; rate.**

- (a) A tax is levied and imposed on every distributor who supplies to a dealer in the County an electronic cigarette product.
- (b) The tax rate for an electronic cigarette product is 30% of the wholesale price of the electronic cigarette product.
- (c) The County Council by resolution, after a public hearing advertised under Section 52-17(c), may increase or decrease the rate set in subsection (a).
- (d) The County Executive may further specify the administration of this tax by Method (2) regulation.

**52-97. Remittance.**

- (a) The tax levied under Section 52-96 is due and payable for each month on the last day of the next month.
- (b) The Director may establish an alternative payment system. If an alternative payment system is established, the Director must require a pro-rated payment for any taxable period that ends before the system takes effect.
- (c) If any dealer transports or causes to be transported into the County an electronic cigarette product, that dealer is liable for the payment of the tax imposed under Section 52-96 unless that dealer obtains from the supplier of the electronic cigarette product a written certification, in a form approved by the Director, that the supplier is liable for and is paying the tax.

**52-98. Cessation of business.**

When a person who is required to pay a tax under this Article ceases to do business or otherwise disposes of the business, any tax owed becomes immediately due and payable. That person must immediately remit the total amount of the tax due.

**52-99. Collection; interest and penalties; violation.**

(a) If any person does not pay the Director the tax due under Section 52-96, that person is liable for:

(1) interest on the unpaid tax at the rate of 1% per month for each month or part of a month after the tax is due; and

(2) a penalty of 5% of the amount of the tax per month or part of a month after the tax is due, not to exceed 25% of the tax.

The Director must collect any interest and penalty as part of the tax.

(b) If any person does not pay the tax when due, the Director must obtain information on which to calculate the tax due. As soon as the Director obtains sufficient information on which to calculate any tax due, the Director must assess the tax and penalties against the person. The Director must notify the person of the total amount of the tax, interest, and penalties by mail sent to the person's last known address. This notice is prima facie evidence of the tax due; entitles the County to judgment for the amount of the tax, penalty, and interest listed in the notice; and gives the taxpayer the burden of proving that the tax has been paid or any other sufficient defense to the action. The total amount due must be paid within 10 days after the date of the notice.

(c) If any person does not timely file any report and pay the tax required under this Section, the Director may use any available information to estimate the tax due. As soon as the Director obtains available information on which to base the calculation of any tax payable by any person who has not timely filed any report and paid the tax, the Director may assess against that person any tax, interest, and penalties due and must notify that person of the total amount due by regular mail sent to

the person's last known address. The total amount assessed is due and payable within 10 days after the notice is sent.

(d) Every person liable for any tax under Section 52-96 must preserve for 3 years suitable records necessary to determine the amount of the tax. The Director may inspect and audit the records at any reasonable time.

(e) Any failure to pay the tax when due under Section 52-97, and any violation of this Section 52-97 or this Section, is a Class A violation. Each violation is a separate offense. A conviction under this subsection does not relieve any person from paying the tax.

(f) Section 52-18D applies to this tax.

**52-100. Reserved.**

*Approved:*

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George Leventhal, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date



## LEGISLATIVE REQUEST REPORT

Bill 15-15

Taxes – Excise Tax – Electronic Cigarettes

**DESCRIPTION:** Bill 11-15 would establish an excise tax on the distribution of electronic cigarette products; set the rate of the tax and authorize the County Council to change the rate each year by resolution; define certain terms, and authorize the County Executive to issue certain regulations; provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax; and generally amend the County laws governing excise taxation.

**PROBLEM:** The County continues to face many budget pressures. An additional stream of revenue may ease those pressures.

**GOALS AND OBJECTIVES:** To establish an excise tax on electronic cigarette products.

**COORDINATION:** Finance

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** Minnesota and North Carolina have established a tax for certain electronic cigarette products.

**SOURCE OF INFORMATION:** Amanda Mihill, Legislative Attorney, 240-777-7815

**APPLICATION WITHIN MUNICIPALITIES:** Revenue measures apply in all municipalities in the County.

**PENALTIES:** Class A

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BILL 15-15



ROCKVILLE, MARYLAND

MEMORANDUM

May 4, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 15-15, Taxes - Excise Tax - Electronic Cigarettes

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2015 MAY -4 PM 4:21

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
David Platt, Department of Finance  
Jed Millard, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

**Fiscal Impact Statement**  
**Bill 15-15, Taxes – Excise Tax – Electronic Cigarettes**

**1. Legislative Summary:**

This legislation would:

- establish an excise tax on the distribution of electronic cigarette products,
- set the rate of the tax and authorize the County Council to change the rate each year by resolution,
- define certain terms, and authorize the County Executive to issue certain regulations,
- provide for the collection of the tax and payment of interest and penalties,
- set the effective date of the tax, and
- apply certain provisions of the law to this tax.

Specifics of Bill 15-15 include:

- impose a tax rate of 30 percent for an electronic cigarette product based on the wholesale price of the product,
- interest on the unpaid tax at the rate of one percent per month for each month or part of a month after the tax is due, and
- a penalty of five percent of the tax per month or part of a month after the tax is due and not to exceed 25 percent of the tax.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The Department of Finance conducted an analysis to determine potential tax revenue to the County. Using data on average wholesale E-cigarette prices from Wells Fargo Data on manufacturers and demographic and consumption data from the American Community Survey, CDC/FDA Studies, and statista.com, the Department has derived two potential scenarios for additional tax revenue as a result of Bill 15-15.

In the first scenario, all wholesalers are taxed, including online wholesalers which compromise 30 to 50 percent of all sales. In this scenario, tax revenue is estimated at \$2.56 million annually.

In the second scenario, online wholesalers are excluded because they are likely not located in Montgomery County and may not pass on the tax to their customers. In this scenario, tax revenue is estimated at \$1.54 million annually.

See #6 below for expenditure estimates.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

At this time, it is difficult to project a six-year estimate of revenues as there is little historical data related to consumption and pricing of the types of products to be taxed. While an effect of Bill 15-15 may be a reduction in usage in the County, it may also lead consumers to purchase products outside of the County in a jurisdiction that does not charge an excise tax on E-cigarettes. These effects

would lead to a reduction of revenues in the future. However, if consumption and sales rise in the County, revenues may increase.

- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

- 5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable.

- 6. An estimate of the staff time needed to implement the bill.**

As introduced, Bill 15-15 states that the Director (of Finance) may estimate the tax due, but cannot collect the tax until the Director "obtains sufficient information on which to calculate any tax due." If the distributors do not honor the Director's request for this information, then the Director would have to either task staff with actively obtaining the information (directly from the distributor, or at other points in the supply chain), or forego collection of the tax. The Department does not have sufficient staff to actively collect the data required to be able to estimate the total due and collect the tax. All of the currently identified distributors are located outside of Montgomery County and some overseas. Absent enforcement or compliance staff, the distributors would have to honor the Director's request for information so that the tax can be calculated and collected.

An enforcement or compliance effort would require two tax staff members at \$100,000 each, including salary and benefits, plus travel to obtain the necessary information in cases where distributors do not honor the Director's request for information. Travel is estimated at \$30,000 for the first year and includes ten trips. The total estimate of expenditures for the first year of implementation of Bill 15-15 is \$230,000.

- 7. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

- 8. An estimate of costs when an additional appropriation is needed.**

Not applicable.

- 9. A description of any variable that could affect revenue and cost estimates.**

- Total annual consumption (adults & teenagers)
- Total sales by distributors eligible to be taxed
- Number of distributors that do not honor the Director's request for information, requiring travel
- Other regional jurisdictions that enact, or do not enact similar excise taxes
- Percentage of total sales that occur online

- 10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

See #3 above.

**11. If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

**12. Other fiscal impacts or comments.**

Not applicable.

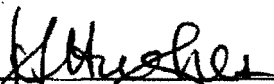
**13. The following contributed to and concurred with this analysis:**

Joe Beach, Director, Department of Finance

David Platt, Department of Finance

Michael Coveyou, Department of Finance

Jedediah Millard, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

5/4/15  
Date

**Economic Impact Statement**  
**Bill 15-15, Taxes – Excise Tax - Electronic Cigarettes**

**Background:**

This legislation would:

- establish an excise tax on the distribution of electronic cigarette (E-cigarette) products,
- set the rate of the tax and authorize the County Council to change the rate each year by resolution,
- define certain terms, and authorize the County Executive to issue certain regulations,
- provide for the collection of the tax and payment of interest and penalties,
- set the effective date of the tax, and
- apply certain provisions of the law to this tax.

Specifics of Bill 15-15 include:

- impose a tax rate of 30 percent for an E-cigarette product based on the wholesale price of the product,
- interest on the unpaid tax at the rate of one percent per month for each month or part of a month after the tax is due, and
- a penalty of five percent of the tax per month or part of a month after the tax is due and not to exceed 25 percent of the tax.

**1. The sources of information, assumptions, and methodologies used.**

Sources of information to estimate the number of E-cigarettes purchased in Montgomery County from wholesalers include:

- Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services,
- U.S. Food and Drug Administration (FDA), U. S. Department of Health and Human Services,
- Special Tax Division, Minnesota Department of Revenue,
- *U.S. Tobacco Trends*, Wells Fargo Securities (March 20, 2014),
- "Are E-cigarettes a safe and good alternative to cigarette smoking?", *Annals of the New York Academy of Sciences* (2014),
- [www.statista.com/statistics/381075/us-e-cigarettes-volume-sales](http://www.statista.com/statistics/381075/us-e-cigarettes-volume-sales),
- American Community Survey, U.S. Bureau of the Census, U.S. Department of Commerce,
- Maryland Office of the State Comptroller, and
- Population Health Metrics.

**Economic Impact Statement**  
**Bill 15-15, Taxes – Excise Tax - Electronic Cigarettes**

There are no readily available data on the consumption of E-cigarettes in Montgomery County. The Department of Finance (Finance) reviewed the sources of information listed above to derive an estimate of local consumption. Based on data from the 2013 Census Bureau's American Community Survey and estimates calculated by Finance from sources listed above, approximately 1.484 million units of E-cigarettes were consumed by Montgomery County residents in 2013.

According to studies obtained by Finance, there are over one hundred small E-cigarette businesses in the U.S. with about 70 percent of the domestic market held by ten businesses. According to an article in the Annals of the New York Academy of Sciences, "a significant portion of the E-cigarette market is conducted on the internet. Most E-cigarette companies have their own websites and it is estimated that 30-50% of total E-cigarette sales are conducted online." Of the non-internet sales, 67.0 percent of E-cigarette sales are sold by convenience stores and the remaining 33.0 percent sold by drug stores and super markets.

Based on a report of E-cigarettes, consumption of E-cigarettes is 10.0 percent among teenagers and 3.4 percent among adults. According to CDC and FDA, in 2014 E-cigarettes were "the most commonly used tobacco product among middle (3.9%) and high (13.4%) school students." The CDC study reports that 2,010,000 high school students used E-cigarettes and 1,380,000 used hookah. The same study reported that 450,000 middle school students used E-cigarettes and 280,000 used hookah.

According to Wells Fargo Securities (Wells Fargo), consumption of E-cigarettes could surpass combustible cigarettes in ten years. Total retail sales of E-cigarettes/ E-vapor are approximately \$1.9 billion, and Wells Fargo estimates that annual growth of E-cigarettes will be 20 percent. Retailers will continue to carry 30 E-cigarettes of daily inventory (SKU – stock keeping unit) on hand. Each SKU is equivalent to 1.25 packs of combustible cigarettes. Wells Fargo also reported that total revenue from manufactures could reach \$2.8 billion in 2015 and \$6.9 billion in 2016. Based on the volume and revenue data, the average wholesale price per pack of E-cigarettes is estimated at \$5.60 in 2015 and \$5.75 in 2016.

Statista.com estimates that sales of E-cigarettes were 482 million in 2014. Based on that data and with consumption among teenagers at 10.0 percent and among adults at 3.4 percent, Finance estimates that the average consumption per E-cigarette consumer is fifty-four equivalent packs per year.

**2. A description of any variable that could affect the economic impact estimates.**

The variables that could affect economic impact estimates are:

- Total annual consumption of E-cigarettes (statista.com data),
- Total estimated revenues and volume by manufacturers (Wells Fargo Securities),

**Economic Impact Statement**  
**Bill 15-15, Taxes – Excise Tax - Electronic Cigarettes**

- Total consumption by high school and middle school students (CFC/FDA survey),
- Population estimates for the U.S. and Montgomery County (American Community Survey), and
- Other Washington Metropolitan jurisdiction that impose a wholesale tax and the amount of that tax on E-cigarettes.

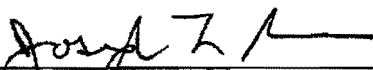
**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

Based on an estimate of E-cigarette usage in Montgomery County, the potential wholesale revenues could be over \$8 million. Moreover, as indicated above, this amount may increase over time with the growth in E-cigarette usage. Since between 30% and 50% of sales occur through the internet directly to individuals from wholesalers that are not located in Montgomery County and therefore may not pass on the tax to their customers, the wholesale revenues for local stores in Montgomery County may be \$5 million. If surrounding jurisdictions do not impose a wholesale tax on E-cigarettes, consumers may purchase that product outside Montgomery County. Hence, such activity could have a negative impact on revenues mainly to convenience stores. However, the amount of revenue loss is dependent on unit sales and retail prices. Based on data from the Maryland Office of the State Comptroller and from Population Health Metrics, Finance estimates that total sales revenues from combustible cigarettes was \$22.3 million in 2014. Since estimated sales of E-cigarettes represent just under 20 percent of combined cigarette and E-cigarette sales revenues, any reduction in sales of E-cigarettes resulting from the tax on this product may have a negative economic impact on convenience stores, drug stores, and super markets, although it is not possible without specific information to determine what that economic impact on employment, spending, saving, investment, incomes, and property values in the County will be.

**4. If a Bill is likely to have no economic impact, why is that the case?**

See paragraph #3

**5. The following contributed to or concurred with this analysis: David Platt, Mary Casciotti, Michael Coveyou, and Rob Hagedoorn, Finance.**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

4-27-15  
Date



BILL 15-15



AM  
CC  
SBF  
LL


OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

May 5, 2015

TO: George Leventhal, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Council Bill 15-15, Taxes – Excise Tax – Electronic Cigarettes

This memorandum is to express my support for Council Bill 15-15, Excise Tax – Electronic Cigarettes. I want to commend Councilmember Hucker for his leadership in initiating this legislation.

The staff of the Department of Finance and the Office of Management and Budget estimate that this tax, when fully implemented, could raise from \$1.5 to \$2.5 million annually depending on compliance, the application of the tax to online wholesalers, and whether the final legislation will provide the appropriate authority and flexibility to the Department of Finance in administering the tax.

Upon the advice of the Office of the County Attorney and the Department of Finance, I recommend that the Council amend the bill so that it makes clear that the Department of Finance may estimate taxes based on “any available information” when a taxpayer is delinquent or non-compliant with the legislation. This is the same authority that the Department of Finance Director has in administering the Fuel Energy Tax.

I urge the Council to approve this legislation.

c: Timothy L. Firestine, Chief Administrative Officer  
Joseph F. Beach, Director, Department of Finance  
Jennifer Hughes, Director, Office of Management and Budget  
Uma Ahluwalia, Director, Department of Health and Human Services  
Bonnie Kirkland, Assistant Chief Administrative Officer

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2015 MAY -5 AM 9:36



American Cancer Society  
 Cancer Action Network  
 801 Roeder Road, Suite 800  
 Silver Spring, MD 20910  
 301.758.1255  
 www.acscan.org

April 5, 2015

**TO:** George Leventhal, President  
 Members Montgomery County Council  
**FROM:** Bonita M. Pennino, MS, Maryland Government Relations Director  
**RE:** Bill 15-15 – Excise Tax on Electronic Cigarettes  
**Position:** Support

Councilmember Tom Hucker is on the right track with Bill 15-15 to establish an excise tax on the distribution of electronic cigarette products. Experience tells us that regular and significant tax increases on tobacco products have been proven to be one of the most effective ways to reduce tobacco use. For every 10% increase in the overall price of a tobacco product, we see about a 7 percent reduction in youth smoking and about a 4 percent reduction in overall consumption.

ACS CAN supports applying and increasing the tax on all tobacco products, including electronic cigarettes.

Electronic tobacco products, or e-cigarettes, commonly refer to the category of battery-operated products that are designed to deliver a heated aerosol containing nicotine and other chemicals to the user. Some e-cigarettes are disposable, and others consist of a rechargeable heating element and a replaceable or refillable cartridge that may contain nicotine, flavoring agents, and other chemicals (sometimes called “e-juices”). Electronic tobacco products are designed to look like cigarettes, cigars, pipes, or hookahs; others use a “tank” system that carry more liquid.

There are hundreds of types of e-cigarettes on the market today and products vary considerably by ingredients, quality control and assurance, and ability to reliably deliver nicotine to users. E-cigarette manufacturers claim the ingredients are “safe,” but e-cigarettes have not been subject to thorough, independent testing so users cannot be sure of what they are actually inhaling and how e-cigarette use could affect their health and the health of those around them.

A growing number of studies have examined the contents of e-cigarette aerosol. Unlike vapor, aerosols contain fine liquid particles, solid particles, or both. Propylene glycol, nicotine, and flavorings were most commonly found in e-cigarette aerosol. Other studies have found the aerosol to contain heavy metals, volatile organic compounds, and tobacco-specific nitrosamines, among other potentially harmful chemicals. A 2009 study by the FDA found cancer-causing substances

in several of the e-cigarette samples tested. Additionally, the FDA found nicotine in some e-cigarettes that claimed to contain no nicotine.

Since the introduction of e-cigarettes to the U.S. in 2007, the marketing and use of these products have increased dramatically. A study looking at data from 2010-2013 found an increase in the number of adults who have ever used e-cigarettes, from 3.3 to 8.5 percent. In 2013, 36.5 percent of current smokers had ever tried e-cigarettes, compared to 79.8 percent of former smokers and 1.2 percent of never smokers. Most concerning, a study from the Centers for Disease Control and Prevention (CDC) found that e-cigarettes were the most used tobacco product among youth in 2014, increasing from 1.5 to 13.4 percent of high school students reporting current use, with similar trends in middle school students. The CDC estimates that 2.4 million youth have tried e-cigarette products.

To protect kids from a lifelong addiction to tobacco products and to help current tobacco users quit, ACS CAN supports regulating e-cigarettes in the same manner as cigarettes and other tobacco products, including applying a tax on all electronic cigarettes at a rate in parity to the tax on cigarettes and other tobacco products. ACS CAN also recommends that Montgomery County establish licensing for all retailers and distributors of these electronic products to ensure the appropriate taxes are applied and collected.

**From:** Nunez, Andrea  
**Sent:** Monday, May 04, 2015 10:07:10 AM  
**To:** Mihill, Amanda  
**Subject:** FW: Montgomery County E-cigarette Tax bill - Hearing Tuesday night

---

**From:** Pete Fisher [<mailto:pfisher@TobaccoFreeKids.org>]  
**Sent:** Monday, May 04, 2015 10:01 AM  
**To:** Nunez, Andrea  
**Subject:** RE: Montgomery County E-cigarette Tax bill - Hearing Tuesday night

The Campaign for Tobacco-Free Kids supports Bill 15-15, to tax electronic cigarettes at the same rate as other tobacco products. As you know, the use of electronic cigarettes by young people has been increasing rapidly (see article below). In the absence of FDA action to regulate these devices, it is up to state and local governments to take action to address this disturbing trend and we applaud Councilmember Hucker for taking the lead on this issue.

Peter H. Fisher  
Vice President, State Issues  
Campaign for Tobacco-Free Kids  
1400 I Street, NW  
Washington, DC 20005  
(202) 296-5469  
(202) 296-5427 fax  
(202) 251-8119 mobile  
[www.tobaccofreekids.org](http://www.tobaccofreekids.org)

As youth vaping rises, teens cite the allure of tricks  
By Jilian Mincer  
1 May 2015  
Copyright 2015 Thomson Reuters. All Rights Reserved.

NEW YORK, May 1 (Reuters) - On a recent morning, Roger Tarazon and several friends gathered a few blocks from their Queens, New York high school. Some smoked traditional cigarettes, but Tarazon and a few others puffed on electronic vaping devices.

"Sometimes I use it to relax," the 18-year-old senior said of the device. He also uses it to perform tricks with the vapor, blowing smoke rings or creating funnels of smoke that look like miniature tornadoes.

"I don't do it to show off," he said. "I just do them because I'm bored."

Tarazon's embrace of such tricks reflects a growing trend among U.S. teenagers, whose use of e-cigarettes tripled in the last year alone. New research provided to Reuters has found that performing tricks is one of the top two reasons young users say they consider the devices cool.

Public health officials have warned for several years of the attraction of flavored nicotine liquid to teens and tweens, and have urged regulators to ban them. Consumers have a wide range of flavor choices, including menthol, single-malt scotch, cappuccino and pomegranate.

But the role of tricks in enticing young people to use e-cigarettes has not previously been explored. Now researchers are asking whether they could help hook a new generation who otherwise would not have used nicotine.

"We expected the flavors were attractive," said Suchitra Krishnan-Sarin, a psychiatry professor at the Yale School of Medicine. "But smoke tricks were a surprise to us."

Krishnan-Sarin and her team, with funding from the National Institutes of Health, asked 5,400 Connecticut teens to identify what they found "cool about e-cigarettes?"

The top two answers were: the flavors of the vaping liquids, and the "ability to do tricks."

Electronic devices produce much more vapor, especially when adjusted to operate at high temperatures, than conventional cigarettes, which helps facilitate the vapor tricks. Teen interest in performing them comes as "cloud competitions," are increasing in popularity.

The contests, in which adult vapers, as they call themselves, compete to perform the best tricks and create the biggest and densest vapor clouds, are becoming a regular feature at local vape shops. Some regional competitions offer thousands of dollars in prize money.

Thousands of videos demonstrating expert vaping and how to perform tricks have been posted on YouTube and Instagram. "Even if (teenagers) don't attend these events they are exposed to a lot of these issues," Krishnan-Sarin said.

## ALARM OVER TEEN USE

E-cigarette use by U.S. tweens and teens tripled in 2014 to 13.4 percent from 4.5 percent in 2013, according to data released in April by the Centers for Disease Control and Prevention. Overall tobacco use during that period dropped to 9.2 percent from 12.7 percent. For a graphic, see: <http://link.reuters.com/fes54w> [http://link.reuters.com/fes54w]

The data prompted new alarm among public health advocates, who urged the Obama administration to quickly finalize proposed rules that will allow the Food and Drug Administration to regulate e-cigarettes for the first time.

Using e-cigarettes is considered less risky than smoking traditional tobacco cigarettes, which increase the likelihood of lung cancer and other disease. But several studies have found that heating the liquids used in electronic devices to very high temperatures could release formaldehyde, a carcinogen.

"If you don't smoke, if you don't use tobacco products, there is no reason to experiment with electronic cigarettes," said Maciej L. Goniewicz, a professor at the Roswell Park Cancer Institute, who has done some of the formaldehyde research.

Tarazon and other teens said their favorite tricks include something called the "dragon," in which vapor is exhaled from both nostrils and sides of their mouth. They learn the tricks from each other or by watching online videos with demonstrations set to popular music.

Many are of cloud competitions, which started on the West Coast a few years ago but are now popular nationwide. The majority are low-key events at vape shops where winners typically are awarded devices or gift cards.

But there are also beginning to be far more serious competitions. The Vape Capitol Cloud Championship, for example, will offer \$10,000 for the Biggest Cloud and the best Vape Tricks.

The competitors - mostly men in their 20s and 30s - train to increase their lung capacity by blowing up balloons and by using diving equipment and plastic breathing devices typically used after surgery. The events bar minors from competing, and often from attending, too, though there is no law prohibiting them from being part of the audience.

"We're aware that there is a niche group that enjoys participating in vapor competitions," said Phil Daman, president of the Smoke-Free Alternative Trade Association. "Any use of these products should be strictly limited to adults."

Chris Esker, at Fogwind Vapor in Effingham, Illinois said he'd rather not have minors attend the store's events, but he can't prevent parents from bringing their kids.



Mission: To improve public health in Maryland through education and advocacy

Vision: Healthy Marylanders living in Healthy Communities

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**Testimony in Support of Bill 15-15  
Taxes – Excise Tax – Electronic Cigarettes  
May 5, 2015**

Presented by Christopher Rogers, MPH  
Member, MdPHA Advocacy Committee

Thank you for this hearing today. I am Christopher Rogers. It is my privilege today to represent the Maryland Public Health Association as an Advocacy Committee Member. MdPHA is the state affiliate of the American Public Health Association, a 142-year-old professional organization with more than 50,000 members. This testimony is in support of Bill 15-15, a bill to implement a new excise tax on all electronic cigarettes and other vaping products in the County. But I want every member of this august body to know that MdPHA believes very strongly in *Health in All Policies*, and we stand ready to assist you in every way that we can to continue your excellent record of protecting the public's health.

Montgomery County leads the state in many important ways. It ensured the right of its residents to breathe clean indoor air – everywhere – in 2003 – four years before the Maryland General Assembly caught up and did so for the entire state. Hopefully, this Council's actions on the issue of e-cigarettes tax will also lead the state to do the right thing.

The manufacturers and sellers of e-cigs – i.e., the Big Tobacco Companies who bring you the conventional cigarettes that kill 440,000 Americans every year – want you to believe that e-cigs are “harmless,” “safe alternatives” to tobacco, and can even help addicted smokers quit.

As was true with tobacco, the promotion of e-cigs is way ahead of reports on the research that honestly examines the health effects of these products. But from all that we know so far, e-cigarettes are certainly *not* safe. Rather:

- E-cigs are designed to deliver nicotine – as former Surgeon General Koop told us long ago, the most addictive drug we know.
- The vapor exhaled by e-cigarette smokers is *not* “pure” or “water.” Rather, it contains nicotine and other toxic and carcinogenic metals and chemicals including tobacco-specific nitrosamines.
- Even short-term exposure to propylene glycol, one of the primary components of the aerosol emitted by e-cigarettes, causes eye, throat and airway irritation. Long-term exposure can result in children developing asthma.

- The secondhand “vapor” from e-cigarettes may not be as dangerous as the secondhand smoke from conventional cigarettes which is estimated to kill 50,000 people every year in this country alone. But that does not make it “safe.” And it does not justify allowing it to pollute our indoor air.

Tobacco companies also want people to believe that e-cigs are really “cessation devices” that will help people kick their tobacco cigarette addictions. This assertion is also ludicrous. Why would tobacco companies manufacture, promote and sell a product designed to put them out of business? And why would their stockholders allow them to do so?

As CNN reported on December 31<sup>st</sup>, at least 2 million teens have tried or are using e-cigs. They are not doing so to kick conventional cigarette addictions. Teens who might never try conventional cigarettes are being attracted to e-cigs with flavors including “cotton candy,” “cherry crush” and “Gumi Bearz.” In fact, the Centers for Disease Control and Prevention reported that e-cigarette use doubled among middle and high school students between 2011 and 2012. This is not surprising considering that between 2011 and 2013, the number of youths exposed to television ads for e-cigarettes increased 321%.

Because e-cigarettes are not yet regulated by FDA – or any health agency – their quality, their ingredients, and even their levels of nicotine are largely unknown. One of the few things we know for sure is that e-cigs have brought a huge surge in nicotine poisoning. CDC reported in April of last year that e-cigarette related calls to poison centers went from an average of one per month in 2010 to 215 per month in February 2014. More than half of these were about children under the age of five who had been poisoned through ingestion, inhalation and absorption through the skin and eyes.

All these reasons is why a recent report by the independent nonprofit organization – Pew Charitable Trust indicates two states – Minnesota and North Carolina have taxed e-cigarettes, and 13 other states – Delaware, Hawaii, Indiana, Kentucky, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont and Washington – have proposed legislation either this year or last year.

There is simply no reason to not impose a tax on distributors whenever they sell e-cigarettes to dealers (retailers) in the County.

Thank you again for Montgomery County being in the vanguard of this effort.

Thank you.

# MCEA TESTIMONY

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## Montgomery County Council Public Hearing on Council Bill 15-15 – Excise Tax on Electronic Cigarettes

Tuesday May 5, 2015

Presented by Tom Israel, Executive Director  
Montgomery County Education Association

Good evening members of the County Council. I speak tonight on behalf of the Montgomery County Education Association. MCEA represents the more than 12,000 non-supervisory professional educators who work with our 153, 852 students every day. I am here tonight to testify in support of Council Bill 15-15, establishing an excise tax on e-cigarettes and related paraphernalia.

Public policy is about choices. Your decision on whether or not to approve this proposal will reflect the choices you as elected leaders make. It will reflect your priorities.

We believe there are three good reasons to support this proposal – and we can see no good reasons to oppose it.

**The first good reason to support this proposal is because it adds new revenue to the county at a time when the county government is hard pressed to raise enough revenue to meet the needs of the community.** The unmet needs are clear; in education, in health & human services, in services to youth and to seniors. This is one of the few options available to you to raise additional revenues. But unlike other revenue sources – this one is voluntary. If a resident doesn't want to pay it, they can choose not to buy the products. You would not be taxing food, or housing, clothing. E-cigarettes and paraphernalia are not fundamental human needs. Don't like the tax? Don't buy the products.

**The second good reason to support this proposal is its positive impact on public health.** A recent New York Times article (4/16/15) reported that e-cigarette use among middle school and high school students tripled from 2013 to 2014. The use among high school students soared from just 4.5% in 2013 to 13.4% in 2014. The director of the Centers for Disease Control and Prevention describe these numbers as “shocking”. The director of the FDA’s Center for Tobacco Products said that “with all the progress we’ve made in reducing youth cigarette smoking, that progress is in jeopardy”. E-cigarettes are a public health threat. Our society has a long history of taxing public health threats to discourage their use – and the evidence clearly shows it works. I can think of no reason why we should hesitate to do the same with this new – and rapidly emerging – public health threat. Doing so is in the best interests of our children.

But this is also an opportunity for a win-win for our students. Depending on the rate you set, Montgomery County could be raising \$2 - \$5 million per year in new revenue<sup>1</sup>.

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<sup>1</sup> Based on estimated revenues from projections in other jurisdictions.



**The third good reason to support this proposal is to avoid an increase in elementary school class sizes.**

As it stands now, the MCPS budget you are scheduled to approve will result in the second increase in class size in the last six years. Since when did it become acceptable to increase class sizes?

For \$5 million, this Council could provide the funding necessary to avoid an increase in elementary class sizes.

Therefore we are here to propose that you approve this new tax – on a public health threat – and specifically use the new revenues to avoid an increase in elementary school class sizes. We cannot imagine why anyone would be opposed to such a win-win opportunity.

There should be no debate that class size matters in public education. I would refer you to a recent survey of the literature on class sizes, published by the National Education Policy Center that definitively concludes that:

*“Class size is an important determinant of student outcomes, and one that can be directly determined by policy. All else being equal, increasing class sizes will harm student outcomes .... The payoff from class-size reductions is greater for low-income and minority children, while any increases in class size will likely be most harmful to these populations”<sup>2</sup>.*

Most people in public life express support for public education. But what matters most to teachers is not what people say – but what they do. Increasing class sizes in MCPS should not be OK. You have the opportunity to do something about it.

You have the opportunity to raise badly needed new revenue, to discourage a public health threat, and to specifically use those funds to prevent an increase in elementary school class sizes.

Oh behalf of our students – we urge you to approve this tax, and dedicate the funds to preventing the increase in elementary school class sizes.

The choice is yours.

Thank you.



<sup>2</sup> <http://nepc.colorado.edu/publication/does-class-size-matter>

**Testimony from  
Yvette Cuffie  
Secretary Treasurer, UFCW Local 1994  
TO  
Montgomery County Council  
Council Office Building, 3<sup>rd</sup> floor**

May 5, 2015

UFCW Local 1994 MCGEO is in support of Bill 15-15, taxing electronic cigarettes. We agree that the County should levy this tax as it could generate significant revenue for the County.

We also believe that the County should adopt this tax because it could discourage the use of this product – a product we know little about as far as health risks are concerned. While evidence suggests that e-cigarettes are safer than their counterparts, the research on them is in its nascent stages. There's not enough information and we should do everything we can to protect public health.

The FDA has said that it is not known whether e-cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death. We do know that the 2014 Surgeon General's report found that nicotine use could have an adverse effect on youth brain development. Among all of the alternative tobacco products, e-cigarettes are the least regulated. They have no warning labels and could be sold to people of any age. The FDA has not approved e-cigarettes as a way to quit smoking. Right now, a tax like the one proposed by Councilman Hucker could moderate the number of people choosing e-cigarettes. I urge you to support this bill.

My name is Dolly Kildee, and I'm here tonight representing SEIU Local 500 in support of Council Bill 15-15. Local 500, whose members are MCPS support personnel, adjunct professors, and child care providers naturally has an interest in the health and welfare of young people. Unlike everything else that has the prefix E, such as e-receipts, e-forms, e-mail, e-banking, e-books, etc., the prefix E does not mean an improvement in the case of e-cigarettes; many of the old problems of ordinary cigarettes remain. Young people look on e-cigarettes as a healthy alternative to smoking, which they are not. E-cigarettes contain nicotine, formaldehyde, and other harmful chemicals. The second-hand smoke you breathe is an "aerosol of exhaled nicotine, ultra-fine particles, volatile organic compounds, and other toxins." (Dr. Stanton Glantz, Director for the Center for Tobacco Control Research and Education at the University of California)

E-cigarettes, unless marketed for therapeutic purposes, are not regulated by the FDA Center for Drug Evaluation and Research, as are cigarettes, cigarette tobacco, roll-your-own tobacco and smokeless tobacco. So we should do as much as we can to discourage young people from ever starting to smoke. As is true with a lot of other things, the way to do that is to hit them where it hurts the most, in their pocketbooks.

Raising taxes on cigarettes has reduced smoking in every case. Here in Maryland when the state increased the tax from \$1 to \$2 a pack in 2008, sales declined 27.1%. And as an added bonus revenue increased 45.8% (126.9 million).

The proposed tax will not only discourage new smokers. The added revenue will help offset funding shortages for many of the county's needs, such as social services, medical services, affordable housing and education.

Thank you for giving us the opportunity to make our views known on this very important topic.

# E-Mail Viewer

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[Message](#)[Details](#)[Attachments](#)[Headers](#)[Source](#)[HTML](#)

From: "Gail Becker" <beckerga@hotmail.com>

Date: 5/1/2015 10:16:24 PM

To: "Montgomery County Council" <county.council@montgomerycountymd.gov>

Cc:

Subject: Support Tax on E-Cigarettes

Dear County Council Members,

Please support the excise tax on e-cigarettes, bill 15-15. I also recommend you increase the tax on all tobacco. Tobacco is destroying the health of both smokers and non-smokers. The tax doesn't begin to cover the damage caused by these items.

Sincerely, Gail Becker  
Bethesda, MD 20814

[Close](#)

# E-Mail Viewer

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Message

Details

Attachments

Headers

Source

[HTML](#)

From: "Royal Buyer" <royalbuyer5@gmail.com>

Date: 5/2/2015 11:05:02 PM

To: "County Council" <County.Council@MontgomeryCountymd.gov>

Cc:

Subject: Tax on E-Cigaretts

Please support MC Bill 15-15 providing a heavy tax on E-Cigaretts.

Royal S. Buyer  
15100 Sunflower Court  
Rockville, MD  
240-688-6474

Close

# E-Mail Viewer

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[Message](#)[Details](#)[Attachments](#)[Headers](#)[Source](#)[HTML](#)

From: "Laura G" <parlerhablar@gmail.com>

Date: 5/2/2015 1:15:19 PM

To: "county.council@montgomerycountymd.gov" <county.council@montgomerycountymd.gov>

Cc:

Subject: Please support Bill 15-15 Excise Tax on e-Cigarettes

County Council Members,

Please support Bill 15-15 which will impose at 30% tax on e-Cigarettes.

This tax not only serves as a viable means to raise Montgomery County tax revenue among adults who still choose to use this product, but will also stem the growth in demand among teens who now purchasing them to the detriment of their health.

Sincerely,

Laura Galvin  
5225 Pooks Hill Road  
Bethesda, MD 20814

[Close](#)

# E-Mail Viewer

Message Details Attachments Headers Source

[HTML](#)

From: "Peggy Lynn Kidwell" <plkidwell@gmail.com>

Date: 4/30/2015 6:54:50 PM

To: "county.council@montgomerycountymd.gov" <county.council@montgomerycountymd.gov>

Cc:

Subject: Testimony in support of electronic cigarette higher taxes

Re: Bill to Establish Excise Tax on E-cigarettes

Dear Montgomery County Council Members:

As an eleven year resident of Montgomery County, I submit written testimony herein to be shared at the public hearing that I cannot attend on May 5 at 7:30 pm.

Council member Tom Hucker is on the right track with Bill 15-5 to establish an excise tax on the distribution of electronic cigarette products.

Any tax on tobacco products that have not been proven safe by the FDA is a good idea to serve as a deterrent to keep our youth from ever starting to use them.

There should not be an exemption for e-cigarette products as their delivery method, via vapor or aerosol is dangerous. I realize we cannot protect those who want to use these products, but we can impose higher taxes to protect our youth and others that have to breathe the vapors from these products.

Clean air is the responsibility of our legislators, so I call upon you to stand up for all of us.

Respectfully,

Peggy Kidwell  
8607 Brandt Place  
Bethesda, Maryland 20814

(240) 271-0177

plkidwell@gmail.com <mailto:plkidwell@gmail.com>

Close

Oral Testimony, May 5<sup>th</sup>, 2015: Heather Kusnetz, PhD  
 Bill 15-5, Excise Tax—Electronic Cigarettes

My name is Heather Kusnetz and I'm a postdoctoral fellow at the NIH. North Bethesda has been my home for just about 3 years now, and I boast to others about our amazing restaurants and stores, clean streets, and plentiful geocache locations.

I support bill 15-15 that would levy an excise tax on e-cigarettes, e-juice, and other e-cigarette components. E-cigarettes should be taxed in parity with the State Of Maryland's tax on other tobacco products, that is, at 30% of the wholesale purchase price. I'll explain why.

1. Nicotine contained within e-cigarettes and their cartridges are almost always derived from tobacco, so they should be taxed in the very least similarly to that of **other tobacco products**.
2. It's only fair to those wholesale distributors in Montgomery County that are already paying a Maryland excise tax on either cigarettes or **other tobacco products** such as smokeless tobacco and cigars.
3. Taxes and consumption are inversely related: what this means is that if a tax is applied, the increase in cost is passed on indirectly to the retailer, which ultimately trickles down to the consumer.

Of grave concern is the tripling of e-cigarette use among high school youth that occurred nationally between 2013 and 2014 as reported by the CDC's National Youth Tobacco Survey. This result is on par with the 'Monitoring the Future Survey' funded by the National Institutes of Health which reports current e-cigarette use among youth to be approximately 17.1% during 2014. Not all high school students have jobs where they can afford e-cigarettes and their components, so applying an e-cigarette tax in any form is expected to reduce the rate of e-cigarette use among them. Finally, it's a fact that increasing the cost of tobacco products reduces youth smoking rates.

If we ensure that e-cigarette wholesalers in Montgomery County pay this tax, we can generate real revenue for our County from a market that first launched back in 2007.

Tobacco products are the most heavily taxed item in the United States. Yet, there is currently no federal excise tax on e-cigarettes and it is therefore up to states and local government to apply those taxes. I see Montgomery County as no exception in that it should keep up with inflation and acquire revenue to continue serving its mission. If Bill 15-15 passes, at some point we would need to establish a license for retailers of e-cigarettes and their distributors so that the tax can be collected without worry. Thank you.



# E-Mail Viewer

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[Message](#)[Details](#)[Attachments](#)[Headers](#)[Source](#)[HTML](#)

From: "linsil@usermail.com" <linsil@usermail.com>

Date: 5/1/2015 6:42:57 PM

To: "county council" <county.council@montgomerycountymd.gov>

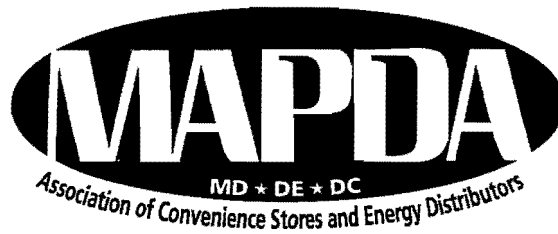
Cc:

Subject: asking your support - taxing e-cigarettes

County Councilmembers - please support MC Bill 15-15 - it makes sense to tax e-cigarettes in parallel with other cigarettes being taxed - and in recognition of government needing revenue in the future to deal with the health effects on those using e-cigarettes.

Linda Silversmith  
Rockville MD

[Close](#)



To: Members of the Montgomery County Council

From: Ellen Valentino

Date: May 5, 2015

Re: Opposition to Bill 15-15 Excise Tax on E-Cigarettes

On behalf of the Mid-Atlantic Petroleum Distributors Association I am here this evening to oppose Bill 15-15.

**This will target and hurt Montgomery County businesses.** The legislation will place Montgomery County at a competitive disadvantage. Customers can and will travel outside the county to purchase electronic cigarette products. And when they do – they will purchase their gasoline and other goods and services.

**DUFFY LAW OFFICE, PLC**  
20118 N 67TH AVE • SUITE 300-453  
GLENDALE, AZ 85308  
PHONE: 623-547-7310 • FAX: 623-561-7744

STEVEN J. DUFFY  
steve@duffyplc.com

April 28, 2015

VIA email: [county.council@montgomerycountymd.gov](mailto:county.council@montgomerycountymd.gov)

Hon. Roger Berliner, Council Member  
Hon. Marc Elrich, Council Member  
Hon. Nancy Floreen, Council Member  
Hon. Tom Hucker, Council Member  
Hon. Sidney Katz, Council Member  
Hon. George Leventhal, Council Member  
Hon. Nancy Navarro, Council Member  
Hon. Craig Rice, Council Member  
Hon. Hans Riemer, Council Member  
Council Office Building  
100 Maryland Avenue, 5th Floor  
Rockville, MD 20850

Re: Proposed Tax on Electronic Cigarette Products

Dear Council Members:

As legal counsel for the National Association of Tobacco Outlets, Inc. (NATO), a national retail tobacco trade association with its principal office in the State of Minnesota (for more information, please see [www.natocentral.org](http://www.natocentral.org)), I am providing these comments on behalf of the association and its members located in Montgomery County, MD. We understand the County Council will hold a hearing on May 5, 2015, to consider adding an excise tax on electronic cigarette products of 30% of the wholesale price. NATO and its members are very concerned about the impact of such a tax, and we believe it may well be counterproductive by harming retailers and their customers who may want to transition to using electronic cigarettes.

**A Tax will Force Sales Outside the County and Likely Be Highly Regressive**

This new tax on e-cigarettes will cause a sales decline in County stores. Consumers are sophisticated enough that they will not accept paying a 30% tax for the privilege of purchasing their e-cigarettes at retailers in the County. Rather, all but the poor, the elderly and other less mobile consumers will seek out other sources to buy e-cigarette products outside of the County or over the Internet and avoid paying this tax to the County in the process. When they do this, they will also not buy those other products that consumers typically buy such as gasoline, groceries, and other sundry items, but will buy those products outside the County as well. The net effect will be a reduction in sales at County stores, particularly sales to those most able to avoid shopping in the County, the wealthier and more mobile and Internet sophisticated among them.

### **The Science is Not Out on These Products**

Many consumers consider electronic cigarettes to be a positive alternative to traditional, combustible cigarettes. Since electronic cigarettes heat a liquid containing nicotine rather than burn tobacco, electronic cigarettes are non-combustible and do not share the same health-related characteristics, for their users and those around them, that are associated with using traditional cigarettes. From a retailer's perspective, it seems counterproductive to impose a tax on electronic cigarettes when adult smokers should not be discouraged from using them.

The U.S. Food and Drug Administration is currently considering the appropriate regulatory framework for e-cigarettes, and the County prejudices the result of that process by imposing an excise tax on a product under federal review. In August 2014, the agency closed its comment period on its pending regulations, and tens of thousands of comments must be considered before the FDA acts. In addition, the FDA has held two public workshops on the subject "Electronic Cigarettes and the Public Health," and recently the agency gave notice that it will hold one more workshop on June 1 and 2, 2015. Notice of this workshop may be accessed here:

<http://www.fda.gov/TobaccoProducts/NewsEvents/ucm439029.htm>

Until the FDA has had time to consider the information gleaned from this series of workshops and the thousands of comments to the regulatory framework, any tax proposal discouraging the use of electronic cigarettes is premature.

Thank you for your consideration of these comments.

Sincerely,

***Steven J. Duffy***

For National Association of Tobacco Outlets, Inc.

**Suburban Washington Area Franchise Owner's Association  
5049 Garrett Avenue  
Beltsville, MD 20705**

May 5, 2015

The Honorable George Leventhal  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Councilman Leventhal:

I am writing this letter on behalf of the 7-Eleven Suburban Washington Area Franchise Owner's Association (SWAFO) in opposition to Bill 15-15, Taxes - Excise Tax Electronic Cigarettes.

SWAFO currently has 53 members who own and operate 66 7-Eleven stores in Maryland and Virginia. Members who have stores in Montgomery County total 29. Although we are part of a large convenience store chain, we are all independent small business owners who face the daily challenges of making a living in today's highly competitive business environment. As small business owners, we play an active part in our local communities, supporting schools and athletic events, as well as always being there for emergency responders.

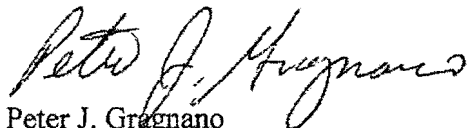
Members are currently entering our peak selling season and are attempting to recover from the recent winter which saw sales decline due to the unpredictable weather in our region. Combine declining sales with the recent increases in the minimum wage passed by Montgomery and Prince George's Counties, as well as the District of Columbia, and the economic pressure on all small business owners has increased dramatically in these locales.

Passing a 30 percent tax on Electronic Cigarettes will inhibit sales at a time when we are attempting to recoup lost income from the winter. Moreover, if Montgomery County acts in isolation on this tax, the result will be to merely shift the purchase of these products to the surrounding counties and Virginia, thereby losing not only sales tax on this product, but on the other items that are generally purchased in a market basket with electronic cigarettes.

Finally, studies have shown that anytime one state or local jurisdiction has a substantially higher tax than its adjoining neighbors, there is an inherent increase in the smuggling of product into the higher tax area, once again resulting in the ultimate loss of tax revenues for the County.

In conclusion, the negative impact on the small business community who already face increased costs due to legislative mandates, coupled with the ultimate loss of tax revenues, should preclude the passage of this bill.

Respectfully submitted:



Peter J. Gragnano

President

Suburban Washington Area Franchise Owner's Association

cc: Members of the Montgomery County Council  
The Honorable Ike Leggett, County Executive



April 29, 2015

Montgomery County Council President and Members  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council Members,

**Subject: Oppose Bill 15-15 Tax on E-Cigarettes**

In the state of Maryland, over 20.2% of cigarettes sold are considered "smuggled contraband" according to the Tax Foundation statistics. Those smuggled cigarettes are smuggled in from Virginia and sold on the sidewalk and in various locations that can be changed daily by smart phone notification. A carton of cigarettes is \$17.00 cheaper in VA on taxes alone.

WMDA feels by increasing the tax on e-cigarettes to 30% of the wholesale cost, we would encourage more illegal activity and cause more loss for our small businesses and our tax base. Businesses can be monitored, street salesman can not. These sales bring crime and drugs in to our neighborhoods as drugs are often sold along with the smuggled products.

Let's not create more opportunity for the criminals who profit from these sales.

WMDA is opposed to adding 30% tax on wholesale price of e-cigarettes and components and for keeping our sales inside our stores.

Any questions you might have can be addresses via email or my cell, 301-775-0221.

Thank You,

*Kirk McCauley*

**Kirk McCauley**  
**Director of Member Relations and Government Affairs**  
**WMDA Service Station &**  
**Automotive Repair Association**  
**301-390-0900 ext 114**  
**kmccauley@wmda.net**

**From:** Leventhal's Office, Councilmember  
**Sent:** Tuesday, May 05, 2015 12:54:09 PM  
**To:** Council President  
**Subject:** FW: E-Cig Tax

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**From:** Cliff [mailto:cliffbaileyjr@live.com]  
**Sent:** Tuesday, May 05, 2015 7:02 AM  
**To:** Leventhal's Office, Councilmember  
**Subject:** E-Cig Tax

Dear Councilman

I am a resident in Montgomery County and ask that you don't tax everything and ever part of our lives. I am a non-smoker but like most county residents are very tired of all these taxes. As we can note that is how we got a Republican Governor.

I urge you to please give the residents of this county a break and not pass this legislation. I hope you and all council members start thinking more about residents and all these taxes.

Thank you,  
Cliff Bailey Jr.  
Resident of Montgomery County



**From:** Leventhal's Office, Councilmember

**Sent:** Tuesday, May 05, 2015 1:25:44 PM

**To:** Council President

**Subject:** FW: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

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-----Original Message-----

From: Rachel Becker [<mailto:rjettbrooks01@gmail.com>]

Sent: Tuesday, May 05, 2015 11:56 AM

To: Leventhal's Office, Councilmember

Subject: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

Rachel Becker

709 Midland Road

Silver Spring, MD 20904

May 5, 2015

Dear George Leventhal,

Just so you know by using vapor I have quit smoking cigarettes and I don't want to go back. I want to continue to use vapor as it does not pose any threats to me or my child. I am writing as a voter and taxpayer urging you to oppose Bill 15-15 and any other effort that would subject vapor products (e-cigarettes) to new and unjustified taxes. E-cigarettes are an incredibly low-risk alternative to smoking, and imposing an extra tax on this potentially life-saving technology would work against the interests of genuine public health and small businesses trying to grow in Montgomery County.

Subjecting smoke-free vapor products to an extra sin tax and other punitive regulations that are designed to discourage smoking is grossly inappropriate. Changing the law to tax low-risk vapor products will actually create barriers for adults to quit smoking, something that is indefensible from a public health standpoint. Increasing their purchase price will only serve to encourage Montgomery County's 82,000 plus adult smokers to continue smoking instead of making the switch to products that are estimated to be 99% less hazardous than cigarettes.

While smoking is widely known to pose significant and potentially devastating health risks, each year only approximately 3% of smokers will successfully quit. Innovative products that further the public health goal of reducing smoking should be promoted. There is overwhelming evidence, ranging from systematic studies to thousands of detailed testimonials (<http://testimonials.casaa.org/testimonials/>), showing that e-cigarettes help many smokers quit or reduce their smoking habit, even after they have unsuccessfully tried every other method.

While this measure is designed to bring in revenue to Montgomery County, the end result will likely be less jobs, less tax revenue, and less access to low-risk vapor products, all of which will result in more smokers deciding not to quit. Additionally, while today there are several exclusive vapor product retailers that are paying county taxes and employing Montgomery County citizens, the pressure of this tax will almost undoubtedly send their customers into untaxed territories like Virginia, Pennsylvania, neighboring counties, or even the internet.

I along with my fellow members of The Consumer Advocates for Smoke-free Alternatives Association (CASAA) implore you to resist calls for over-regulation and taxation from misguided activists that seek to impede adult access to far less hazardous alternatives to smoking. I look forward to your response on this issue and I am available for any questions you might have.

Sincerely,  
Rachel Becker

# E-Mail Viewer

Message Details Attachments Headers Source

[HTML](#)

From: "carolescarlson@aol.com" <carolescarlson@aol.com>  
Date: 4/30/2015 1:16:32 PM  
To: "county.council@montgomerycountymd.gov" <county.council@montgomerycountymd.gov>  
Cc:  
Subject: excise tax on e-cigarettes

Dear County Councilmembers,

I write to ask you NOT to levy an excise tax on e-cigarettes.

I am the long-suffering wife of a two-pack-a-day smoker. I have tried for nearly 3 decades to get my husband to quit, and a year ago convinced him to try e-cigarettes to help wean himself off his nicotine addiction.

I know that many people think of tobacco as an easy source of revenue. We know the health problems that it causes, and can't imagine how anyone could be a smoker, and think that smokers deserve it. Well, my husband got hooked as a teenager, long before the time when the part of the brain that helps make good decisions gets fully developed. Now he's addicted.

On top of that, it is not just he who is affected by these taxes. Our whole family suffers. I once calculated that his smoking drains nearly \$5,000 a year from our family coffers, which since he was laid off three years ago has become very problematic. That money used to represent the vacations we couldn't take. Now it represents the heating oil I have to buy on credit to keep our house minimally warm.

Now that I have finally got him to try cutting back by using e-cigarettes, the last thing I need is to have that become more expensive.

Please do not levy taxes on e-cigarettes.

Thank you,

Carole S. Carlson  
19733 Meredith Drive  
Derwood, MD 20855

PS proponents will say that there isn't proof that using e-cigarettes can help someone quit. It was recommended to me by my nephew, who quit smoking using this method nearly three years ago. Worked for him.

**From:** Leventhal's Office, Councilmember

**Sent:** Thursday, April 30, 2015 6:56:11 PM

**To:** Council President

**Subject:** Fw: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

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From: Vernon Chiang <tanj3113@comcast.net>

Sent: Thursday, April 30, 2015 6:27 PM

To: Leventhal's Office, Councilmember

Subject: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

Vernon Chiang

10100 Ridge Manor Terrace K

Damascus, MD 20872

April 30, 2015

Dear George Leventhal,

I am writing as a voter and taxpayer urging you to oppose Bill 15-15 and any other effort that would subject vapor products (e-cigarettes) to new and unjustified taxes. E-cigarettes are an incredibly low-risk alternative to smoking, and imposing an extra tax on this potentially life-saving technology would work against the interests of genuine public health and small businesses trying to grow in Montgomery County.

Subjecting smoke-free vapor products to an extra sin tax and other punitive regulations that are designed to discourage smoking is grossly inappropriate. Changing the law to tax low-risk vapor products will actually create barriers for adults to quit smoking, something that is indefensible from a public health standpoint. Increasing their purchase price will only serve to encourage Montgomery County's 82,000 plus adult smokers to continue smoking instead of making the switch to products that are estimated to be 99% less hazardous than cigarettes.

While smoking is widely known to pose significant and potentially devastating health risks, each year only approximately 3% of smokers will successfully quit. Innovative products that further the public health goal of reducing smoking should be promoted. There is overwhelming evidence, ranging from systematic studies to thousands of detailed testimonials (<http://testimonials.casaa.org/testimonials/>), showing that e-cigarettes help many smokers quit or reduce their smoking habit, even after they have unsuccessfully tried every other method.

While this measure is designed to bring in revenue to Montgomery County, the end result will likely be less jobs, less tax revenue, and less access to low-risk vapor products, all of which will result in more smokers deciding not to quit. Additionally, while today there are several exclusive vapor product retailers that are paying county taxes and employing Montgomery County citizens, the pressure of this tax will almost undoubtedly send their customers into untaxed territories like Virginia, Pennsylvania, neighboring counties, or even the internet.

I along with my fellow members of The Consumer Advocates for Smoke-free Alternatives Association (CASAA) implore you to resist calls for over-regulation and taxation from misguided activists that seek to impede adult access to far less hazardous alternatives to smoking. I look forward to your response on this issue and I am available for any questions you might have.

Sincerely,  
Vernon Chiang

**I oppose and reject in no uncertain terms the entirety of Bill 15-15.**

In my 63 years as a County resident I cannot remember a tax so blatantly proposed only as a means to raise revenue, and so specifically targeted to a minority for the purpose of assuring passage. As a member of this minority, I refuse to be penalized for choosing a healthier alternative to smoking for myself and those around me.

As justified in the Legislative Request Report, bill 15-15 is an excise tax on products for no stated purpose other than to increase County revenue. However upon reading of the legislation text it appears to be justified as corrective or punitive simply due to the use of vapor producing devices "simulating smoking".

1. While I realize that the County may not be legally required to show any justification for taxation other than for increase of government revenue, citizens expect that the Council would have a well defined and rationalized justification of why such a targeted tax is necessary, along with evidence to support the appropriateness of the proposed taxation rate. Neither is the case.
2. Councilman Hucker voiced an unwritten objective as "to bring e-cigarettes in line with other tobacco products"<sup>1</sup> but provides no evidence that parity exists between these products, let alone in consequences of use. If the Council considers the passage of bill 56-14 and the pending amendments to Chapter 24 as evidence of parity, then this premise is incorrect and it is necessary to review the as-passed intent, text, and evidence of bill 56-14.
  - County bill 56-14 was NOT written as **tobacco** legislation, but rather as **nicotine** legislation.

On review of the testimony around bill 56-14 as well as the introductory documents and other submitted but unpublished testimony, the evidence clearly points to it's enactment as a means to:

- Restrict nicotine use by adolescents on the basis that nicotine inhibits "normal" brain growth and functionality, (which is not disputed).
- Avoid exposing adolescents to adult use of e-cigarettes on the unproven theory that such exposure could "renormalize" conventional tobacco use,
- Avoid exposing the general public to secondhand emissions from e-cigarettes, although said harm was anecdotal and never qualified, quantified, nor evaluated in depth.
- Avoid accidental ingestion of nicotine containing vapor products by adolescents.

At no time during consideration of bill 56-14 did evidence show that e-cigarette use itself was an equivalent threat to Public Health to that of tobacco use. No testimony was presented that use of or dependence upon nicotine by adults caused social dysfunction or behavior warranting legislation (other than the alleged simulation of smoking). Among testimony heard was that from NIDA which stated that it had "no official position" on e-cigarettes, and that "the research on e-cigarettes is currently incomplete and inconclusive"<sup>2</sup>. I personally submitted research paper references to the Council showing e-cigarette efficacy and medical recommendations for smoking cessation, inconsequential harm to bystanders, contradictory research for the "renormalization" theory, and that among researchers e-cigarettes are considered distinctive from "tobacco products"<sup>3</sup>.

3. The Council has not shown what if any additional costs would be incurred by the adolescent purchase and use prohibition (which is redundant given existing State law), the child-proof packaging, or the public emissions/perceptions prohibition portions of 56-14.
4. Due to the very nature of excise taxes, bill 15-15 unfairly burdens an extreme minority (much less than the 13.4%<sup>4</sup> to 16.4%<sup>5</sup> of current County cigarette smokers) of adult citizens who predominately use these products to improve their own health while also improving the health of the general public by using an inarguably less harmful and drastically emission reduced tobacco alternative.

In closing;

Enactment of a punitive or corrective tax in combination with the deceptively incorrect message of smoking equivalence that bill 56-14 presents to the 13.4% to 16.4% (approx. 136,000 to 166,000) current County tobacco smokers is by far a larger harm to citizens by discouraging the otherwise obvious harm reduction of choosing e-cigarettes over smoking. I will also remind the Council that 136,000 to 166,000 people is the equivalent to the entire population of Frederick and Rockville **combined**.

In evaluating the statistics showing a decrease in tobacco cigarette use while e-cigarette use is increasing, the Council appears to interpret this as a revenue decline and recapture opportunity rather than embracing a substantial Public Health benefit.

County legislation and the proposed taxation of nicotine products is a novel concept that should be thoroughly debated before the County rushes to fill its coffers and stifle its last great chance to end tobacco smoking. Tobacco use by burning and inhalation has a robust history of health harm whereas extracted nicotine, particularly delivered otherwise has never been established to cause harm of equivalent magnitude, and in fact has been shown to have beneficial qualities for a variety of human disorders.

Let's not lose sight of the original goals of tobacco legislation and "denormalization" (legal bullying for "a good cause") which was: the enormity of health harm from burning whole tobacco products, not nicotine.

Without amendment of bill 56-14's changes to Chapter 24 to allow for posted and youth restricted "Vaping Allowed" venues for consenting adults, its enactment along with this proposed tax on devices and components of them simply because they "simulate smoking" only prolongs the use and negative consequences of burned whole tobacco products, and is contrary to Montgomery County's reputation of being both a "healthy" and a "progressive" County. Time and the continuing published research will bear this out.

Jim Davis

White Oak, MD 20904

5 May 2015

**Attached:** "J.E. Davis Submission on Proposed Montgomery County Bill 56-14," January 29, 2015.

**References:**

<sup>1</sup> *Council In Brief - April 14, 2015*, 2015, [https://www.youtube.com/watch?feature=player\\_detailpage&v=5ZralyL5PE#t=169](https://www.youtube.com/watch?feature=player_detailpage&v=5ZralyL5PE#t=169).

<sup>2</sup> "Montgomery County, MD Bill 56-14- HHS Worksession- Jul 21st, 2014," July 21, 2014, [http://montgomerycountymd.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=7654](http://montgomerycountymd.granicus.com/MediaPlayer.php?view_id=6&clip_id=7654).

<sup>3</sup> "J.E. Davis Submission on Proposed Montgomery County Bill 56-14," January 29, 2015. <https://drive.google.com/open?id=0B0Wv0r2PYWuxUW1OanVldmdZX1k&authuser=0>

<sup>4</sup> "Healthy Montgomery:: Community Dashboard :: Cigarette Smoking," accessed April 29, 2015, <http://www.healthymontgomery.org/modules.php?op=modload&name=NS-Indicator&file=indicator&iid=12299692>.

<sup>5</sup> CDC, "CDC - STATE-BRFSS System: Maryland Highlights Report," accessed May 4, 2015, <http://apps.nccd.cdc.gov/statesystem/HighlightReport/HighlightReport.aspx?FromHomePage=Y&StateName=Maryland&StateId=MD#BEH>.

# E-Mail Viewer

Message Details Attachments Headers Source

HTML

From: "Eric Frit" <friteric@gmail.com>

Date: 4/29/2015 10:16:09 AM

To: "county.council@montgomerycountymd.gov" <county.council@montgomerycountymd.gov>

Cc:

Subject: Bill 15-15 taxing vapor supplies

Hello, I am a lifetime resident in Montgomery County and a business owner in the county that employees county residents and pay county taxes. The bill 15-15 is only going to give people the personal clearance they need to go back to buy tobacco products if you price them the same. I attended the last council hearing on this issue and invited all the council including Ms. Floreen to stop by 1 of our vapor stores in the county and see first hand what is happening there. The council members should meet the county residents that are getting off tobacco everyday in our stores and 1000s like them around the country. Since February when I met the council, no one has come to our stores or any of the other owners stores you have been invited to. If you put a tax on vapor you are creating a step back to tobacco products and actually hurting the health of mc residents. How can you not see that this is helping tobacco producers and helping people make bad decisions like continuing to smoke real cigarettes. Please use common sense, please come by our stores anytime, please find ways to raise revenue without killing small businesses and telling your mc citizens to smoke cigarettes instead of vapor. The research is thin, but the evidence is strong that vapor will replace real cigarettes in less than 10 years and it is way better for you than traditional cigarettes. Look at the studies from Oxford and others like University of Maryland even, the EU is way ahead of the USA on e cigs, do some research, use google, be cutting edge, innovative, not rigid and restrictive when you do not understand the products or industry. Be smart, do your research, come see us in our stores. Vapor is good for MC and its residents. I am available anytime to talk or meet with you. I will be at the hearing on may 5th as well. So please make time to hear and understand the issue rather than go for a money grab while hurting the health of the citizens of MC. Please reach out to the businesses and people you will affect with your legislation. So far no one in MC government has done that. Government for the people by the people not by 6 or 8 council members who do no research, or understand the impact of the legislation they are considering. You are playing right into the hands of big tobacco again; haven't we been dooped and lied to enough by big tobacco at this point? Don't get fooled, read, learn and understand the impact of your actions and how big tobacco wins again if you tax vapor. And you only hurt small businesses and their employees and the residents of MC. If you want to change something, why don't you ask the big tobacco companies why they sell real cigarettes and vapor? You shouldn't allow that, it is like the casino running the gambler's rehabilitation. Vapor is mom and pop shops and we are fighting big tobacco we are not with them, we do not sell their vapor products or use their products. You guys are trying to support big tobacco? Sounds bad for health and bad for politics, no? Thank you for your time and I hope consideration. Bill 15-15 is a terrible idea, please vote it down. Eric Frit Partner Vapor Worldwide 240-793-3280 20 year smoker, now I quit thanks to vapor, like millions of others around the globe. Sent from my T-Mobile 4G LTE Device

Close

**From:** Leventhal's Office, Councilmember  
**Sent:** Wednesday, April 29, 2015 11:57:25 AM  
**To:** Council President  
**Subject:** Fw: Please oppose Bill 15-15.

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From: Devin Imirie <dimirie@gmail.com>  
Sent: Wednesday, April 29, 2015 11:16 AM  
To: Leventhal's Office, Councilmember  
Subject: Please oppose Bill 15-15.

Devin Imirie  
18856 Bent Willow Cir  
Germantown, MD 20874

April 29, 2015

Dear George Leventhal,

This e-cigarette witch hunt is getting ridiculous. I was a smoker for 15 years and e-cigs finally set me free from my deadly and expensive addiction. I tried patches and gums and prescription medications to kick my habit but I always found myself buying another pack of cigarettes. I've been completely off cigarettes for 1 year and 2 months and I've never felt better. E-cigs have the potential to save millions of lives but local governments are responding by taxing and banning this very effective harm-reduction/smoking cessation product. It makes no sense and the people of Montgomery County deserve better. When e-cigs are taxed and banned, Big Tobacco wins. Please oppose this bill for the health of your constituents. Thanks for reading this.

I am writing as a voter and taxpayer urging you to oppose Bill 15-15 and any other effort that would subject vapor products (e-cigarettes) to new and unjustified taxes. E-cigarettes are an incredibly low-risk alternative to smoking, and imposing an extra tax on this potentially life-saving technology would work against the interests of genuine public health and small businesses trying to grow in Montgomery County.

Subjecting smoke-free vapor products to an extra sin tax and other punitive regulations that are designed to discourage smoking is grossly inappropriate. Changing the law to tax low-risk vapor products will actually create barriers for adults to quit smoking, something that is indefensible from a public health standpoint. Increasing their purchase price will only serve to encourage Montgomery County's 82,000 plus adult smokers to continue smoking instead of making the switch to products that are estimated to be 99% less hazardous than cigarettes.

While smoking is widely known to pose significant and potentially devastating health risks, each year only approximately 3% of smokers will successfully quit. Innovative products that further the public health goal of reducing smoking should be promoted. There is overwhelming evidence, ranging from systematic studies to thousands of detailed testimonials (<http://testimonials.casaa.org/testimonials/>), showing that e-cigarettes help many smokers quit or reduce their smoking habit, even after they have unsuccessfully tried every other method.

While this measure is designed to bring in revenue to Montgomery County, the end result will likely be less jobs, less tax revenue, and less access to low-risk vapor products, all of which will result in more smokers deciding not to quit. Additionally, while today there are several exclusive vapor product retailers that are paying county taxes and employing

Montgomery County citizens, the pressure of this tax will almost undoubtedly send their customers into untaxed territories like Virginia, Pennsylvania, neighboring counties, or even the internet.

I along with my fellow members of The Consumer Advocates for Smoke-free Alternatives Association (CASAA) implore you to resist calls for over-regulation and taxation from misguided activists that seek to impede adult access to far less hazardous alternatives to smoking. I look forward to your response on this issue and I am available for any questions you might have.

Sincerely,  
Devin Imirie



Montgomery County Council Bill 15-15  
Hearing May 5, 2015  
Speaker: Benjamin Lackey, Vape Social

I am speaking to you in hopes that you will withdraw the 30% wholesale tax bill on Vape Products. This tax, while it may look enticing from a revenue standpoint, will effectively eliminate numerous small local vape businesses and the jobs these small businesses provide for many residents of our county. We already work with a relatively small profit margin and this tax will force us to increase our prices to the point of no longer being competitive with retailers just out of the county or online. The proposed tax will do nothing but drive consumers to other counties or states. This was already seen when the previous Montgomery County tobacco tax was initiated. Legislators believed it would create a revenue spike, however, smokers just took their money to other counties, Virginia, or DC. Cities as large as Las Vegas, Nevada and Washington, DC have already understood the impact a large tax will have on their people and withdrew their tax bills. Our customers appreciate what we do for our community and how many people we have helped quit smoking. However, such a large increase in pricing, which will be a direct result of this bill, can only lead to our customers looking elsewhere for their products. There are a huge collection of vape stores located in Northern Virginia, PG, Howard, and Frederick Counties that would be thrilled for this bill to pass, as they would absorb a large amount of the customers who would normally spend their money in Montgomery County. As you may have heard today, there are a huge amount of residents of Montgomery County that oppose this bill and what may result from it. We, as local small business owners, implore you to consider the effect bill 15-15 will have on our livelihood and please withdraw it. I started my business hoping that I could help a few people quit smoking and improve their quality of life. The more people we help quit smoking, the better we feel about our business and the closer we become with our community. In closing, I am asking that Bill 15-15 be withdrawn from consideration. I do not believe the revenue you are hoping to generate will be possible with this bill in place. You will only be working to destroy a group of local resident owned small businesses and drive revenues to neighboring Counties. Also, as a tax-paying resident of Montgomery County for close to 20 years, I cannot support a bill that would cripple so many local businesses for what will essentially pan out to pocket change for the County. We may not have lobbyist backing and deep pockets, but we do have a great voting presence in our community and will put up a fight for what we believe in. Thank you for your time.

# E-Mail Viewer

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Message Details Attachments Headers Source

HTML

From: "cathymahan@gmail.com" <cathymahan@gmail.com>  
Date: 4/17/2015 2:23:19 PM  
To: "county.council@mccouncilmd.lmhostediq.com"  
<county.council@mccouncilmd.lmhostediq.com>  
Cc:  
Subject: BILL 15-15 - (Council Webform)

I am asking as a constituent of this county that you reconsider passing this bill on e-cigarettes/vapor products. You will be putting small businesses in the county out of business. As someone who recently switched from smoking to vaping, if the tax passes, I would go to a surrounding county to get my products, or buy online. This shouldn't be associated with smoking; this isn't smoking. Aren't we taxed enough in this county??? I just left my local vape store and they said they will have to close their store because nobody is going to buy their products in the county anymore. He will literally not be able to stay afloat. I think it's sad that the answer to everything is to tax it, at the expense of small businesses, their employees, and county residents. I don't know how much longer I can afford to live in this county. Stop punishing the taxpayers!!

Close

# E-Mail Viewer

Message Details Attachments Headers Source

HTML

From: "Virginia Reaves" <gingermail12@gmail.com>

Date: 5/4/2015 12:37:46 PM

To: "county.council@montgomerycountymd.gov" <county.council@montgomerycountymd.gov>

Cc:

Subject: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

Virginia Reaves  
1405 Pillock Place  
Silver Spring, MD 20905

May 4, 2015

Dear Montgomery County Full Council,

I am writing as a voter and taxpayer urging you to oppose Bill 15-15 and any other effort that would subject vapor products (e-cigarettes) to new and unjustified taxes. E-cigarettes are an incredibly low-risk alternative to smoking, and imposing an extra tax on this potentially life-saving technology would work against the interests of genuine public health and small businesses trying to grow in Montgomery County.

Subjecting smoke-free vapor products to an extra sin tax and other punitive regulations that are designed to discourage smoking is grossly inappropriate. Changing the law to tax low-risk vapor products will actually create barriers for adults to quit smoking, something that is indefensible from a public health standpoint. Increasing their purchase price will only serve to encourage Montgomery County's 82,000 plus adult smokers to continue smoking instead of making the switch to products that are estimated to be 99% less hazardous than cigarettes.

While smoking is widely known to pose significant and potentially devastating health risks, each year only approximately 3% of smokers will successfully quit. Innovative products that further the public health goal of reducing smoking should be promoted. There is overwhelming evidence, ranging from systematic studies to thousands of detailed testimonials (<http://testimonials.casaa.org/testimonials/>), showing that e-cigarettes help many smokers quit or reduce their smoking habit, even after they have unsuccessfully tried every other method.

While this measure is designed to bring in revenue to Montgomery County, the end result will likely be less jobs, less tax revenue, and less access to low-risk vapor products, all of which will result in more smokers deciding not to quit. Additionally, while today there are several exclusive vapor product retailers that are paying county taxes and employing Montgomery County citizens, the pressure of this tax will almost undoubtedly send their customers into untaxed territories like Virginia, Pennsylvania, neighboring counties, or even the internet.

I along with my fellow members of The Consumer Advocates for Smoke-free Alternatives Association (CASAA) implore you to resist calls for over-regulation and taxation from misguided

activists that seek to impede adult access to far less hazardous alternatives to smoking. I look forward to your response on this issue and I am available for any questions you might have.

Sincerely,  
Virginia Reaves

Close

**From:** Leventhal's Office, Councilmember

**Sent:** Wednesday, April 29, 2015 7:45:56 PM

**To:** Council President

**Subject:** Fw: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

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From: Adam reber <adam.alexander.reber@gmail.com>

Sent: Wednesday, April 29, 2015 4:21 PM

To: Leventhal's Office, Councilmember

Subject: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

Adam reber

5900 sonoma road

Bethesda, MD 20817

April 29, 2015

Dear George Leventhal,

I am writing as a voter and taxpayer urging you to oppose Bill 15-15 and any other effort that would subject vapor products (e-cigarettes) to new and unjustified taxes. E-cigarettes are an incredibly low-risk alternative to smoking, and imposing an extra tax on this potentially life-saving technology would work against the interests of genuine public health and small businesses trying to grow in Montgomery County.

Subjecting smoke-free vapor products to an extra sin tax and other punitive regulations that are designed to discourage smoking is grossly inappropriate. Changing the law to tax low-risk vapor products will actually create barriers for adults to quit smoking, something that is indefensible from a public health standpoint. Increasing their purchase price will only serve to encourage Montgomery County's 82,000 plus adult smokers to continue smoking instead of making the switch to products that are estimated to be 99% less hazardous than cigarettes.

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Sincerely,  
Adam reber

# E-Mail Viewer

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From: "matt.shinall@gmail.com" <matt.shinall@gmail.com>  
Date: 4/17/2015 2:32:20 PM  
To: "county.council@mccouncilmd.lmhostediq.com"  
<county.council@mccouncilmd.lmhostediq.com>  
Cc:  
Subject: BILL 15-15 - (Council Webform)

Why do we need to tax vapor products at 30%? It seems there is a tax for EVERYTHING in this county and it's getting harder to live and thrive here. The impact on the businesses you will essentially shut down is detrimental. Do you not realize that people will just go up to Frederick to get their supplies, without the 30% tax, or buy it online? As a former smoker, I would NEVER buy cigarettes in MD; i would go over the Virginia line and get them cheaper. You can't keep taxing people for everything. My wife drives to the grocery store 10 miles away, passes 5 speed trap cameras ONE WAY, then has to pay for the plastic bags to get the groceries home, and finally pass 3 more cameras on the way home. The taxes are out of control and adding this tax will only hurt tax paying residents and small business owners. Why is it ok to punish people for switching to a healthier alternative to smoking??

Close

My name is Nicholas Tombros. I have been a Montgomery County resident for over 30 years, as well as, a tax payer and voter for 12 years. I attended Montgomery County Public Schools throughout my life. I am the owner of an ejuice company.

Why do you propose to tax Electronic Cigarettes as opposed to another industry to generate an additional stream of revenue? Is it because it is assumed Electronic Cigarettes are cigarettes?

Electronic Cigarette = E-Cigs or E-Vapes are

- **Not** cigarettes and are not associated with cigarette companies
- **Not** Hookahs and are not associated with Hookah companies

Vaping can be a nicotine delivery systems without tar and other toxic chemicals, but it does not have to contain nicotine. E-juice typically contains 4 main ingredients:

1. Vegetable glycerin (70-80%)
2. Propylene glycol (15-20%)
3. Flavoring (5 %)
4. Nicotine (0- 36%) Capital Clouds only goes as high as 18%.

Please reference the articles I have attached to my testimony from such publications as The Mayo Clinic, Duke University, the American Lung Association and a few others that have conducted research studies on the ingredients of ejuice and its effect on human health as opposed to tradition tobacco products.

Nicotine is NOT a required ingredient in E-Juice and we are exploring options and research in which nicotine can be extracted from tomatoes, which makes it more clear that this is not a tobacco product and we do not support Big Tobacco.

I supply a number of shops in the county that take up a total of 7.050 square feet of retail space and employ 26 people and their families.

If this bill goes through:

- Customers will buy outside of Montgomery County
  - Loss of sales tax revenue
- Vape shops will move out-side of Montgomery County
  - Leave vacant retail space in Montgomery County
  - Loss of employment
  - Loss in State Unemployment Tax
  - Loss in Medicare/Medicaid payment
- Customers will be pushed back to traditional cigarettes

Summary:

While this measure is designed to bring in revenue to Montgomery County, the end result will likely result in less jobs, less tax revenue, and less access to low-risk vapor products, all of which will result in

more smokers deciding not to quit. Additionally, while today there are several exclusive vapor product retailers that are paying county taxes and employing Montgomery County citizens, the pressure of this tax will almost undoubtedly send their customers into untaxed territories like Virginia, Pennsylvania, neighboring counties, or even the internet.



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\*Council staff note: Due to the size of this information packet, these specific articles are not reproduced in this packet. However, all Council members received copies at the hearing and they are available from Council staff.

Good evening, my Name is Chris Webber, I'm a life long Montgomery County resident, and the Assistant director of Free To Vape, a vapor advocacy organization.

Vapor products represent a 95%-99% reduction in health risks compared to traditional tobacco products, and as such, they do not deserve to be taxed at the same rate. Vapor products improve, not detract from the public health by helping smokers quit tobacco, adding years of productive economic activity to their lives. Applying the same sin tax to Vapor Products as is currently being levied on Tobacco products, will not only hurt the public health by making a vastly healthier alternative more inaccessible, it will devastate the small Montgomery County businesses that are involved in their trade.

Plainly stated, given competition from online vendors and vendors in neighboring counties, If Vapor Product Retailers are taxed an additional 30%, their businesses will just not be viable in the wider market. Consumers will simply travel the 5-30 minutes necessary to visit Vape shops outside of Montgomery County, and shop owners will be faced with only 2 choices: Close their businesses, or move out of Montgomery County.

Though some council members may believe that bill 15-15 may "assist us with our budget challenge this year" this couldn't be further from the truth.

Vape Shops are collectively paying sales tax on millions of dollars of transactions a year, and if bill 15-15 passes, not only will it NOT result in any additional revenue for Montgomery County, it will choke off the existing revenue stream already contributing to Montgomery County Coffers, worsening the current budget problem.

The true travesty however is not the budgetary impact however, it is the impact this bill will have on the 1000's of Montgomery County residents who have used Vapor Products to quit tobacco, a known killer.

Addiction is a complicated disease, and to treat it, both pharmacological and behavioral elements are needed. Vape Shops provide the community support vapers need to fully transition from tobacco to vapor, and this piece of legislation will make this support inaccessible in Montgomery County within the year.

Bill 15-15, if passed, will only do two things; cause real harm to residents who wish to transition from a deadly tobacco habit to an exponentially safer alternative, and force consumers outside of the county to buy vapor products, hurting, not helping the Montgomery county budget.

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# **Montgomery County Council Public Testimony In OPPOSITION To Bill 15-15**

Scott Webber  
8803 Seven Locks Rd  
Bethesda, MD 20817  
240-994-4670  
webbers@mac.com

Councilmember Hucker & Members of the Council,

My name is Scott Webber and I am a 20-year Montgomery County resident. I am a vehement anti-smoking advocate and I strongly OPPOSE Bill 15-15 because, like its companion Bill 56-14 passed earlier by this Council, does absolutely NOTHING to help smokers stop smoking, and in fact, does nothing but put up further barriers to those who are trying to find alternatives to smoking. Why this Council wants to enact law to make it MORE difficult to stop smoking is simply beyond my understanding. It is my firm position that IF this Council really wanted to reduce smoking in Montgomery County, it would not only encourage vaping as a vastly superior behavior over smoking, but it should actual SUBSIDIZE vaping in an effort to entice and induce smokers to quit their deadly addiction. Bill 15-15 does NOTHING to effect this outcome, and makes makes a stronger argument to continue smoking tobacco.

Bill 15-15 purports specifically to be a bill intended to raise revenue for Montgomery County, but it is my belief and understanding of basic consumer behavior that this thinking is both short-sighted and erroneous. A 30% increase in the wholesale cost of a vaping product will translate into an approximate 40-60% increase in the retail cost to the consumer. Such a cost differential is simply not sustainable for most shop owners who will lose customers that can obtain the exact same product for a substantially lower cost by traveling just a short distance to a neighboring jurisdiction, or make their purchases via the Internet. The ability of a Montgomery County vape shop to compete with this unfair environment will most likely force the shop owner to either shut down completely, or simply move their operation into a less hostile jurisdiction. If this is the actual goal of this legislation, then it may indeed be successful, but it is my belief that the net economic loss of combined income tax, sales tax, and employment taxes from these missing small businesses will far outweigh any short-term gain that would be realized from the excise tax being considered.

Furthermore, I believe the language in Bill 15-15 is also severely deficient, primarily in its use of overly broad and vague terms that do little but create confusion.

The definition of an Electronic Cigarette Dealer to mean ANY person who engages in retail business. This is an extremely broad definition.

The definition of an Electronic Cigarette Distributor as a person who supplies an electronic cigarette product. This excessively broad definition would thus include the USPS, FedEx, UPS, or any courier, shipper, or even a taxi cab.

But the most egregious oversimplification is in the definition of an Electronic Cigarette Product to include ANY product containing... ANY other substance intended for human consumption that CAN be used to SIMULATE smoking... includ[ing] ANY such device... under ANY other product name or descriptor... or ANY component of an electronic cigarette.

Such a definition approaches comical interpretation. By this definition, a drinking straw used to inhale [consume] cold winter air that is subsequently exhaled between two fingers in 'movie star' simulated fashion would be subject to this excise tax, as would the Giant Foods grocery store that sold the straw and the delivery truck that 'supplied' the store with the straw.

This obscure definition would include air, water, and any medical vaporizer if used by the 'consumer' in a fashion that 'simulates' smoking.

Who defines what 'simulated smoking' entails in the first place?

Bill 15-15 by the plain language reading of the law would equally impose a 30% excise tax on ANY retailer who supplies "ANY other component of an electronic cigarette."

This components would include:

Copper tubing

Batteries

Cotton

Wire

Vegetable Glycerin

Propylene Glycol

Carrying cases and any such 'accessories'

Ornamental Decoration commonly used in the building of a vaping device...

Where does this stop? And how does Montgomery County envision enforcing such a law that is so loosely and broadly 'defined'?

I do not think it is possible under any conceivable plan.

I believe Bill 15-15 should be withdrawn because it does not promote any useful public policy, is contrary to constructive health policy to reduce smoking, and will cause undue confusion in its unenforceability.

Most sincerely yours,

Scott Webber

# E-Mail Viewer

Message Details Attachments Headers Source

HTML

From: "Serguei Zoubak" <szbk@bearforceinc.com>  
Date: 4/29/2015 10:17:10 AM  
To: "county.council@montgomerycountymd.gov" <county.council@montgomerycountymd.gov>  
Cc:  
Subject: Please oppose Bill 15-15. Extra taxes on vapor products are unjustifiable and protect cigarette markets

Serguei Zoubak  
18106 Coachmans Rd  
Germantown, MD 20874

April 29, 2015

Dear Montgomery County Full Council,

I am writing as a voter and taxpayer urging you to oppose Bill 15-15 and any other effort that would subject vapor products (e-cigarettes) to new and unjustified taxes. E-cigarettes are an incredibly low-risk alternative to smoking, and imposing an extra tax on this potentially life-saving technology would work against the interests of genuine public health and small businesses trying to grow in Montgomery County.

While smoking is widely known to pose significant and potentially devastating health risks, each year only approximately 3% of smokers will successfully quit. Innovative products that further the public health goal of reducing smoking should be promoted. There is overwhelming evidence, ranging from systematic studies to thousands of detailed testimonials (<http://testimonials.casaa.org/testimonials/>), showing that e-cigarettes help many smokers quit or reduce their smoking habit, even after they have unsuccessfully tried every other method.

I know at least 14 persons who successfully abandoned smoking habit after just few weeks they tried e-cigarette. All of them are smoke free for years since then, their health and quality of life are essentially improved. Please note that none of them was able to quit smoking using any FDA-approved tobacco replacement therapies including chewing gum, patches and medication.

Subjecting smoke-free vapor products to an extra sin tax and other punitive regulations that are designed to discourage smoking is grossly inappropriate. Changing the law to tax low-risk vapor products will actually create barriers for adults to quit smoking, something that is indefensible from a public health standpoint. Increasing their purchase price will only serve to encourage Montgomery County's 82,000 plus adult smokers to continue smoking instead of making the switch to products that are estimated to be 99% less hazardous than cigarettes.

While this measure is designed to bring in revenue to Montgomery County, the end result will likely be less jobs, less tax revenue, and less access to low-risk vapor products, all of which will result in more smokers deciding not to quit. Additionally, while today there are several exclusive vapor product retailers that are paying county taxes and employing Montgomery County citizens, the

pressure of this tax will almost undoubtedly send their customers into untaxed territories like Virginia, Pennsylvania, neighboring counties, or even the internet.

I along with my fellow members of The Consumer Advocates for Smoke-free Alternatives Association (CASAA) implore you to resist calls for over-regulation and taxation from misguided activists that seek to impede adult access to far less hazardous alternatives to smoking. I look forward to your response on this issue and I am available for any questions you might have.

Sincerely,  
Serguei Zoubak, Ph.D.

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